

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JONATHAN MARQUEZ,

Plaintiff,

v.

ORTIEZ, et al.,

Defendants.

1:23-cv-01782-KES-EPG (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR LEAVE TO AMEND THE
COMPLAINT BE DENIED

(ECF No. 37)

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY (30) DAYS

Plaintiff Jonathan Marquez is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed his initial complaint on December 29, 2023, (ECF No. 1) and First Amended Complaint on May 10, 2024, (ECF No. 7). This case now proceeds on Plaintiff's claim against Defendant Ortiz for excessive force in violation of the Eighth Amendment. (ECF No. 18).

On September 30, 2025, Plaintiff filed a motion to amend the Complaint. (ECF No. 37). Plaintiff asks to "have a chance to prove that Defendant did retaliate and showed deliberate indifference upon me." (ECF No. 37, at p. 1).

For the following reasons, the Court recommends denying Plaintiff's motion for leave to amend the complaint.

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1 **I. BACKGROUND**

2 Plaintiff filed his initial complaint on December 29, 2023. (ECF No. 1). Plaintiff
3 alleged that, during a fight on a prison yard, Officer O. Ortiz, Lieutenant Gutierrez, and
4 Sergeant Hernandez shot at Plaintiff with 40mm “multi-shot” launchers when Plaintiff failed to
5 immediately assume a prone position. Plaintiff’s complaint asserted claims for excessive force
6 and retaliation.

7 The Court screened Plaintiff’s initial complaint on April 23, 2024, finding that
8 Plaintiff’s complaint failed to state any cognizable claims. (ECF No. 6). The screening order
9 provided the legal standards for excessive force and retaliation and explained why Plaintiff’s
10 allegations failed to state a claim under those standards. Regarding the retaliation claim,
11 Plaintiff did not describe anything defendants said or did that connected their use of force of
12 filing of the RVR against Plaintiff to Plaintiff’s constitutionally protected conduct. The Court
13 gave Plaintiff leave to file an amended complaint. (ECF No. 6, at p. 7).

14 On May 10, 2024, Plaintiff filed a First Amended Complaint. (ECF No. 7). Generally,
15 Plaintiff’s amended complaint alleged almost identical facts as his initial complaint and added a
16 False Allegation and Procedural Due Process claim and a new Defendant (Savoie¹). (See ECF
17 No. 9). One of the changes Plaintiff made in his amended complaint was alleging that he was
18 shot a total of six times, instead of the three times he previously alleged. (ECF No. 9, p.3).
19 Further, Plaintiff alleged that Defendants filed a false RVR against him for fighting, but he was
20 found not guilty. (*Id.*, p. 4).

21 On October 22, 2024, the Court issued findings and recommendations to the District
22 Judge recommending that the action be dismissed for failure to state a claim. (ECF No. 12).
23 Plaintiff filed objections to the Findings and Recommendations on November 4, 2024. (ECF
24 No. 13). In those objections, Plaintiff stated that Defendants were aware of Plaintiff’s prior
25 criminal record, including attempted murder on an officer, and acted in retaliation for that
26 charge. Plaintiff also alleged that Defendants acted in retaliation for Plaintiff writing a 602

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28 ¹ Plaintiff did not list Officer Savoie as a defendant in his initial complaint but did allege Officer Savoie
was one of the officers who were firing launcher shots.

1 grievance.

2 On May 30, 2025, the District Judge adopted this Court's Findings and
3 Recommendations in part, allowing Plaintiff to proceed only on his Eighth Amendment
4 excessive force claim against Defendant Ortiz. All other claims and defendants were
5 terminated. (ECF No. 18).

6 On October 6, 2025, Plaintiff filed a Motion to Amend the Complaint. (ECF No. 37).
7 Plaintiff states that he would like to amend his complaint, "to have the chance to provide that
8 Defendant did retaliate and showed deliberate indifference upon me." (*Id.*, p. 1). Specifically,
9 Plaintiff alleges that the officers, and specifically Defendant Ortiz, retaliated against him for his
10 past criminal history. (*Id.*, pp.1-3). Plaintiff also claims that he has a grievance/602 about "all
11 of that that's granted I'd be more willing to show it in evidence." (ECF No. 37, at p. 2).

12 **II. LEGAL STANDARD**

13 Under Rule 15(a), a party may amend a pleading once as a matter of course within
14 twenty-one days of service, or if the pleading is one to which a response is required, twenty-one
15 days after service of a motion under Rule 12(b), (e), or (f). Fed. R. Civ. P. 15(a)(1)(B). "In all
16 other cases, a party may amend its pleading only with the opposing party's written consent or
17 the court's leave." Fed. R. Civ. P. 15(a)(2).

18 Granting or denying leave to amend is in the discretion of the Court. *Swanson v. United*
19 *States Forest Service*, 87 F.3d 339, 343 (9th Cir. 1996). "In exercising this discretion, a court
20 must be guided by the underlying purpose of Rule 15 to facilitate decision on the merits, rather
21 than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.
22 1981). "Five factors are taken into account to assess the propriety of a motion for leave to
23 amend: bad faith, undue delay, prejudice to the opposing party, futility of the amendment, and
24 whether the plaintiff has previously amended the complaint." *Desertrain v. City of Los*
25 *Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014) (citation omitted); *see also Eminence Cap., LLC*
26 *v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) ("Prejudice is the 'touchstone of the
27 inquiry under rule 15(a).'" (citation omitted).

28 "Although leave to amend 'shall be freely given when justice so requires,' Fed.R.Civ.P.

15(a), it ‘is not to be granted automatically.’” *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (citations omitted). “Leave to amend may be denied if the proposed amendment is futile or would be subject to dismissal.” *Wheeler v. City of Santa Clara*, 894 F.3d 1046, 1059 (9th Cir. 2018).

III. ANALYSIS

The Court recommends denying Plaintiff’s motion for leave to file an amended complaint.

The Court has examined the factors relevant to whether to grant leave to amend: bad faith, undue delay, prejudice to the opposing party, futility of the amendment, and whether the plaintiff has previously amended the complaint.

As an initial matter, the Court finds no evidence of bad faith by the Plaintiff.

However, the Court does find undue delay. The Court issued its screening order with leave to amend on April 23, 2024, almost one and a half years ago. Plaintiff filed an amended complaint on May 10, 2024, alleging the same general facts with minor alterations and an additional claim. Plaintiff also filed objections to the Court’s Findings and Recommendations. To the extent Plaintiff seeks to allege any additional facts not already included in his first two complaints, he has unduly delayed in including them in his previous complaints.

The Court also finds that amendment at this late stage in the case would be prejudicial to the opposing party, Defendant Ortiz. This case has been pending since December 29, 2023. After the screening process, service, and referral for ADR, the case finally is finally proceeding to discovery. It would significantly delay the case if Plaintiff were to file another amended complaint and restart the screening process.

The Court also finds that further amendment is likely to be futile. Although Plaintiff’s motion does not attach a proposed amended complaint, Plaintiff refers to substantially the same factual allegations already included in his previous complaints and objections to the Findings and Recommendations, which have already been considered by the Court.

Finally, Plaintiff has previously amended his complaint once following the Court’s screening order. (ECF No. 7).

1 Thus, after consideration of the relevant factors, the Court recommends denying
2 Plaintiff's motion for leave to file an amended complaint.

3 **IV. CONCLUSION AND RECOMMENDATION**

4 Accordingly, IT IS RECOMMENDED that:

- 5 1. Plaintiff's motion for leave to file a second amended complaint (ECF No. 37) be
6 **DENIED.**

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court. Such a document should be captioned "Objections to Magistrate
11 Judge's Findings and Recommendations." Any objections shall be limited to no more than
12 fifteen pages, including exhibits. Any reply to the objections shall be served and filed within
13 fourteen days after service of the objections.

14 The parties are advised that failure to file objections within the specified time may
15 result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir.
16 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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18 IT IS SO ORDERED.

19 Dated: **October 16, 2025**

20 /s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE